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WILSON v. WOOLDRIDGE et al.

Nov. 11, 1915.

[86 S. E. 872.]

1. **Pleading (§ 301*)—Non Est Factum—Affidavit.**—Under Code 1904, § 3279, providing that when a bill, declaration, or other pleading alleges that any person made “* * * any writing, no proof of the fact alleged shall be required, unless an affidavit be filed, with the pleading putting it in issue, denying that such * * * writing was made by the person charged therewith, * * *” where on a notice of motion for judgment on a bond, a formal plea of non est factum, verified in conformity with Code 1904, § 3278, was filed, a second affidavit under Code 1904, § 3279, was not required.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. §§ 314, 318, 892-897, 904-906; Dec. Dig. § 301.* 3 Va.-W. Va. Enc. Dig. 773; 4 Va.-W. Va. Enc. Dig. 304.]

2. **Witnesses (§ 144*)—Competency—Death of Party—Joint Obligors.**—One joint obligor can testify, regardless of the death of another joint obligor, under the direct provisions of Code 1904, § 3347, and notwithstanding Code 1904, § 3346 (2), providing that an original party to a contract shall not be permitted to testify adversely to the interests of a dead original party.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 625-643; Dec. Dig. § 144.* 13 Va.-W. Va. Enc. Dig. 932.]

3. **Trial (§ 62*)—Rebuttal—Scope of Evidence.**—Certain witnesses identified writings as the defendant's. Later he denied them on the stand. Held that it was not error not to allow plaintiff to recall those witnesses on rebuttal to ask them if they still believed the writings defendant's.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 148-150; Dec. Dig. § 62.*]

4. **Trial (§ 307*)—Documentary Evidence—Jury—Taking from Bar.**—To prove a signature, certain writings were identified by a witness. Plaintiff's counsel then started to show them to the jury, but, upon opposing counsel objecting, and before ruling by the court, he withdrew them. Held, they were not “read in evidence,” within Code, § 3388, which would otherwise entitle plaintiff to have the jury take them on retiring.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 732-737; Dec. Dig. § 307.* 4 Va.-W. Va. Enc. Dig. 757.]

Error to Circuit Court, Tazewell County.

Notice and motion for judgment on a bond by C. C. Wilson against James Wooldridge and another. Judgment for defendants, and plaintiff brings error. Affirmed.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Wm. H. Werth, of Tazewell, for plaintiff in error.
Chapman, Peery & Buchanan and *A. S. Higginbotham*, all of Tazewell, for defendants in error.

ROLLER *v.* ARMENTROUT.

Nov. 11, 1915. Rehearing Denied Nov. 26, 1915.

[86 S. E. 906.]

1. Adverse Possession (§ 13*)—Acquisition of Title—Character of Possession.—Where defendant's grantor lived on the land, had other buildings, had fruit trees and parcels cultivated in vegetables, and portions of the land were cleared, and the whole of it was grazed, and nearly all of it fenced, and her dominion was notorious and recognized by the countryside, and under color of title, her possession was all that is required for adverse possession.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 65, 67-76; Dec. Dig. § 13.* 1 Va.-W. Va. Enc. Dig. 200.]

2. Adverse Possession (§ 71*)—Color of Title—Description of Land—Certainty.—Although a deed to defendant's grantor does not describe the land by metes and bounds, it is sufficient to give color of title where the tract was well known by name and boundaries, so that it might be identified.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 415-429; Dec. Dig. § 71.* 1 Va.-W. Va. Enc. Dig. 206.]

3. Adverse Possession (§ 100*)—Acquisition of Title—Character of Possession.—Where defendant's grantor did not actually occupy as residence the land claimed by adverse possession, but occupied by the necessary character of possession an adjoining tract, title by adverse possession to the claimed tract, if held under color of title, will arise.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 547-574; Dec. Dig. § 100.*]

4. Adverse Possession (§ 60*)—Hostile Character—Requisites.—Although one claiming land by adverse possession received it, together with other heirs, as intestate property, that fact will not prevent her asserting her claim for herself as against a stranger to the family, although she also held as a representative of her coheirs.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 282-312, 323, 328; Dec. Dig. § 60.* 1 Va. W. Va. Enc. Dig. 205.]

5. Taxation (§ 761*)—Tax Deeds—Recitals.—A tax deed failing to set forth the circumstances in relation to the sale as to a report of the sale or confirmation by the court is fatally defective under Code 1904, § 655, requiring that the deed shall set forth all the circumstances appearing in the clerk's office in relation to the same.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1509, 1510-1513; Dec. Dig. § 761.* 13 Va.-W. Va. Enc. Dig. 169.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.